would be financially unable to meet the quantum of damages assessed and ordered to be paid and he accordingly dismissed this limb of the plaintiff's claim. A Notice of Cross Appeal was entered by the plaintiff against this finding, but at the commencement of the hearing of this appeal Mr. Smith, on behalf of the plaintiff, stated that he was not proceeding with this Cross Appeal. It is, therefore, unnecessary to consider this matter further.

It was for these reasons that I was of the opinion that this appeal should be allowed with costs both here and in the Court below.

*Appeal allowed.*

Solicitors: *Cheang Lee & Ong; Sault, Keith Sellar & Co.*

## ABDUL RAZAK v. PUBLIC PROSECUTOR

**[A. Cr. J. (Thomson C.J.) December 16, 1960]**

**[K.L. — Selangor Criminal Appeal No. 68 of 1960]**

*Criminal Law and Procedure — Possession of property reasonably suspected of having been stolen — Minor Offences Ordinance, 1955, s.29(1) — Possession of transistor radio and silver paper knife — Failure to produce document of title.*

In this case the appellant after being questioned by the Police led a Police Officer to a house from where he brought out a "National" transistor radio and a silver paper-knife which he handed to the Police Officer. He said that he got these things from a friend, but who was unable to produce any document of title. On this he was arrested, charged, and sentenced to three months' imprisonment.

**Held:** the appellant was wrongly convicted. There was nothing inherently suspicious in being in possession of a transitor radio nor was there anything inherently suspicious in being in possession of a silver paper-knife.

*Cases referred to:—*

(1) *Munusamy* v. *Public Prosecutor* [1937] M.L.J. 93, 94; [1936] F.M.S.L.R. 194, 196.

(2) *Kuan Hing Wah* v. *Public Prosecutor* [1960] M.L.J. 193.

CRIMINAL APPEAL.

*K. Chelvanayagam* for the appellant.

*Raja Abdul Aziz* (Deputy Public Prosecutor) for respondent.

**Thomson C.J.** (delivering oral judgment): This appellant was convicted in the Magistrate's Court at Kuala Lumpur for possession of property reasonably suspected of having been stolen in contravention of section 29(1) of the Minor Offences Ordinance, 1955. He was sentenced to three months imprisonment.

The facts are that in circumstances which do not appear in evidence the appellant was being questioned by the Police at Circular Road Police Station. He then led a Police officer to a house at a certain address. The appellant entered the house. Shortly afterwards he came out with a "National" transistor radio and a silver paper-knife which were handed to the Police officer. He said that he got these things from a friend called Mahayuddin but who was unable to produce any document of title. On this he was arrested. That was the prosecution case.

The material portions of section 29(1) of the Minor Offences Ordinance read as follows :—

"Any person who has in his possession..... anything which may be reasonably suspected of being stolen.....shall, if he fails to account satisfactorily how he came by the same, be liable to..... imprisonment."

In the present case in my opinion the appellant was wrongly convicted.

In the case of *Munusamy* v. *Public Prosecutor*(1) it was said by Terrell Ag. C.J., with reference to the corresponding section of the previous Minor Offences Enactment, which in terms was the same :—

"It is for the Court to be satisfied that the circumstances were such that the police officer had grounds for suspicion that the property in the accused's possession was stolen property and that such suspicion was reasonable."

I dealt with the matter myself recently in the (1960) M.L.J. 193 case of *Kuan Hing Wah* v. *Public Prosecutor*(2). What I said there was this :—

"Before a conviction can be made out under section 29(1) it must be proved in the first place that the property in possession of which the accused person is found is something 'which may be reasonably suspected of being stolen'. That suspicion may, of course, attach to the property in a number of ways. It may arise from the nature of the property, as where a beggar is found in possession of a diamond ring. It may arise from the behaviour of the accused person, as where he runs away when approached by a Police Officer. There must, however, be something in the circumstances which gives reasonable ground for suspicion."

In the present case there was nothing of the sort. There is nothing inherently suspicious in being in possession of what is called a transistor radio nor is there anything inherently suspicious in being in possession of a silver paper-knife. There is no suggestion that these articles had in fact been stolen from anywhere. There was nothing inherently suspicious about the property nor was there anything inherently suspicious about the behaviour of the appellant.

In the circumstances the appeal is allowed and the conviction quashed.

*Appeal allowed.*

## KHOON CHYE HIN v. PUBLIC PROSECUTOR

**[C. A. (Thomson C.J., Ong and Ismail Khan JJ.) February 6, 1961]**

**[Ipoh — F.M. Criminal Appeal No. 21 of 1960]**

*Criminal Law and Procedure — Murder — Penal Code, s.302 — Evidence of unreliable witness — Rejection of testimony — Misdirection.*

The appellant was convicted for murder under section 302 of the Penal Code. During the trial a witness for the defence in cross-examination contradicted his own evidence in chief. With regard to this the learned trial Judge directed the jury thus: "If, Gentlemen, you consider that they were two deliberate contradictions, then you reject the whole of the evidence of that witness. On the other hand, if you think he was nervous and made a genuine mistake, then his credit still stands. It is